

ESTTA Tracking number: **ESTTA250130**

Filing date: **11/20/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047013
Party	Plaintiff NeTrack, Inc.
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Submission	Opposition/Response to Motion
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Signature	/s/
Date	11/20/2008
Attachments	2008-11-20-DRAFT-NTer-i007-Opposition-to-Motion-to-Strike-02.pdf (4 pages (32475 bytes)

In re Registration No. 3,064,820
Mark: NETTRAK
Registered March 7, 2006

Cancellation No. 92047013

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foundational statements of facts already reflected in the public record. In total, there are 16 enumerated statements of fact, most of which are merely foundational and uncontroversial. Examples of some of the merely foundational and uncontroversial statements contained therein include, *but are not limited to*:

1. I am the Chief Technical Officer (CTO) for NeTrack, Inc.
2. NeTrack, Inc. owns and operates websites associated with the domain names, netrack.com and netrack.net.
3. NeTrack, Inc.'s commercial services include, but are not limited to, voice-over IP (VOIP), dial-up access, spam control, web-based email, web hosting, domain registration, and DSL.
4. NeTrack, Inc. is the owner of Trademark Registration No. 2,139,229 for the mark NETRACK, which was based on U.S. Trademark Application Serial No. 75/287,548 filed on May 6, 1997.
5. U.S. Trademark Application Serial No. 75/287,548 was filed based on actual use of the mark NETRACK.
6. Trademark registration No. 2,139,229 for the mark NETRACK claims goods and services in International Class 038, for telecommunications services, namely, providing access to a global computer network by server colocation, and providing computer leased line and frame relay connectivity for electronic transmission and reception of information.

The above examples and others can be objectively viewed as uncontroversial. Moreover, any concerns to a particular statement within the Dijker Declaration can be addressed by simply striking that particular statement, while preserving the balance of the Dijker Declaration.

Any doubts regarding the Dijker Declaration evidence should be directed to weight, and not to hyper-technical admissibility objections. The Petitioner respectfully suggests that the Board's paramount concern should be with ensuring a fair and complete record of evidence on which to base a final ruling in this Cancellation proceeding, rather than procedural technicalities on admissibility. To the extent that the Board might find that any of the Dijker Declaration statements should have been made available for challenge and cross-examination by the Registrant, only those statements, if any, should be stricken. Therefore, even if the Board decides that the Dijker Declaration was improperly submitted for admission, then the Board nevertheless could and should exercise its discretion to strike only the controversial statements contained therein and admit the balance of the statements.

WHEREFORE, for all of the reasons discussed herein, the Petitioner respectfully

requests that the Board DENY the Registrant's "Motion to Strike Petitioner's Notice of Reliance on Dijker Declaration [Exhibit AA] Filed October 16, 2008 (ESTTA NO. 243087 [TTAB Paper 31])", TTAB Paper 37, (hereafter "Registrant's Motion to Strike"), and ADMIT the Dijker Declaration (Exhibit AA) into evidence, while only striking, if the Board deems necessary, portions of the Dijker Declaration that are objectively controversial.

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing PETITIONER'S OPPOSITION TO REGISTRANT'S MOTION TO STRIKE PETITIONER'S NOTICE OF RELIANCE ON DIJKER DECLARATION FILED OCTOBER 16, 2008 (ESTTA NO. 243087 [TTAB PAPER 31]) was deposited on November 20, 2008 with the United States Post Office, First Class postage prepaid, and addressed to the Registrant's Correspondent as follows:

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 /s/
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